

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA ANDERSON,

Plaintiff,

and

JAMES ANDERSON,

Plaintiff-Appellant,

v

ELIZABETH ALEXANDER,

Defendant-Appellee.

UNPUBLISHED

June 5, 2008

No. 277980

Kent Circuit Court

LC No. 06-002053-NI

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

In this threshold case under the no-fault act,¹ plaintiff-appellant (hereinafter “plaintiff”) appeals as of right from the circuit court’s order granting summary disposition to defendant. We reverse and remand. This case is being decided without oral argument in accordance with MCR 7.214(E).

This case arises out of an automobile accident in which plaintiffs’ car, with both plaintiffs in it, was stopped on the entrance ramp to a freeway, with another car stopped behind them. Defendant, driving a third car, struck the second car, causing it to strike plaintiffs’ car. Both plaintiffs went to the hospital, complaining of, among other things, neck pain. Plaintiff James Anderson was eventually diagnosed with several spinal conditions, and he underwent surgery to fuse several of his vertebrae, resulting in a permanent loss of mobility in his spine. Plaintiffs filed suit to recover for negligence and loss of consortium. Defendant moved for summary disposition on the ground that plaintiff failed to show the requisite serious impairment of body function. The trial court agreed and granted the motion on the basis of plaintiff’s prior history of

¹ MCL 500.3101 *et seq.*

health problems. Plaintiff's wife has not appealed that decision, leaving only plaintiff's case before this Court.

A motion for summary disposition pursuant to MCR 2.116(C)(10) is reviewed de novo, and we review all submitted evidence and inferences therefrom in the light most favorable to the nonmoving party to determine whether it establishes a genuine issue of material fact for a trial. *Coblentz v City of Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). Interpretation and application of statutes is likewise reviewed de novo. *Id.*, 567.

Under MCL 500.3135(1), a person is "subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." "'Serious impairment of body function' means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). Our Supreme Court has explained that the "serious impairment of body function" threshold can only be met if, upon examination and comparison of the plaintiff's life before and after the accident, "the plaintiff's general ability to lead his or her normal life" has been affected by more than a de minimus amount. *Kreiner v Fischer*, 471 Mich 109, 131-133; 683 NW2d 611 (2004).

The Court provided a nonexhaustive list of objective factors that the courts should consider, but it also emphasized that each individual's life was unique, and a given impairment might affect different plaintiff's lives differently. *Kreiner, supra* at 131-133. For example, an inability to engage in sporting activities "might not rise to the level of a serious impairment of body function for some people, in a person who regularly participates in sporting activities that require a full range of motion, these impairments may rise to the level of a serious impairment of a body function." *Williams v Medukas*, 266 Mich App 505, 509; 702 NW2d 667 (2005). However, "a negative effect on a particular aspect of an injured person's life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life." *Kreiner, supra* at 137. The focus is not on the plaintiff's subjective pain and suffering, but on injuries that actually affect the functioning of the body. *Miller v Purcell*, 246 Mich App 244, 249; 631 NW2d 760 (2001). A plaintiff's self-imposed restrictions based on pain are insufficient to establish serious impairment, but physician-imposed restrictions, even if only based on pain, might be. *McDaniel v Hemker*, 268 Mich App 269, 282-284; 707 NW2d 211 (2005).

In this case, the trial court noted that plaintiff was 64 years old, and that three years before the accident he went on disability from work, then was awarded Social Security disability benefits because of an employment-related lower-back injury. Plaintiff's history included chronic headaches, arthritis, back pain, and depression. The above facts are not contested. The trial court found no physician-imposed restrictions on plaintiff, which is the only factual dispute plaintiff raises. Plaintiff has provided an affidavit from his treating neurosurgeon that describes various injuries and the recommendation for surgery, and it states that the accident "significantly aggravated" any prior degenerative conditions, and "caused him restrictions in terms of bending, movement, and other functions of his cervical spine." This, of course, is consistent with an injury to an already-damaged spine resulting in fusion of multiple vertebrae. As the trial court observed, plaintiff also provided a list of activities in which he could no longer engage as well as he could prior to the accident.

The gravamen of the trial court's conclusion was that plaintiff was in poor physical condition prior to the accident, so the fact that he is in poor physical condition after the accident is insufficient to demonstrate "serious impairment." We believe that the trial court's reasoning is mistaken. The mere fact that plaintiff was no longer young and was already unable to work because of a lower back injury does not necessarily mean that *further* back injury cannot affect the trajectory of the remainder of his life. Indeed, an injury that a completely healthy person might deem minor could, perhaps nonintuitively, have a tremendous *relative* impact on a person who already has limited mobility. The significance of plaintiff's well-established preexisting frailties and limitations could well be that an ostensibly small additional burden – which the permanent fusion of part of plaintiff's spine and the loss of flexibility resulting therefrom certainly is, at a minimum – is nevertheless large enough to significantly impair what little such a plaintiff has left to lose.

It is not disputed that plaintiff's "normal life" before the accident was fraught with challenges. It is also not disputed that the accident resulted in another significant challenge being added to that burden. When plaintiff's "whole life" before the accident is compared to his "whole life" after the accident, we believe that plaintiff's additional spinal injury has affected his "general ability" to lead his life.

Reversed and remanded. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Jane M. Beckering